

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

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1 (At 12:50 p.m.)

2 THE COURT: So the plaintiff rests, as I understand.

3 MS. FIEDLER: That's correct, your Honor; plaintiff
4 rests.

5 THE COURT: Very good.

6 And does the defense have a motion?

7 MS. GOLDEN: Yes, your Honor.

8 Your Honor, we would move for a judgment as a matter of
9 law under Rule 50. Plaintiff has not presented sufficient
10 evidence that a reasonable jury could find in favor of him.

11 Plaintiff has not established that he engaged in a good
12 faith protected activity.

13 Additionally, plaintiff has not established a material
14 adverse action or rebutted the legitimate business reasons
15 offered by the City of Lincoln.

16 Finally, plaintiff has not shown that the City of Lincoln
17 would have imposed a material adverse employment action but
18 for plaintiff's alleged protected activity.

19 The disciplinary actions were issued by three different
20 supervisors for legitimate errors committed by plaintiff, and
21 they were not materially adverse.

22 And the battalion chief promotion was not awarded to
23 plaintiff because he was not the most qualified candidate by
24 his own admission.

25 Finally, an EMS supervisor position was never open that

1 he could have been chosen for.

2 For these reasons, we would move for judgment as a matter
3 of law.

4 THE COURT: Very good.

5 That's noted for the record. I recognize this case is
6 somewhat unusual in that it involves an alleged series of
7 adverse employment actions. And it may be questionable
8 whether any one of those alone would be sufficient to be
9 considered an adverse action.

10 But I respect the earlier rulings by Judge Kopf allowing
11 the matter to proceed on the Title VII claim and the Nebraska
12 Fair Employment Practices Act claim on the theory that the
13 alleged adverse actions, taken as a whole, over a period of
14 time may have created a hostile work environment which may
15 have been an adverse action.

16 So I will deny the defense motion.

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21 I certify that the foregoing is a correct transcript from
22 the record of proceedings in the above-entitled matter.

23 /s/ Brenda L. Fauber
24 Brenda L. Fauber, RDR, CRR

March 31, 2019
Date

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